

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

BOOKER TIMOTHY COLE,

Defendant and Appellant.

B272228

(Los Angeles County  
Super. Ct. No. TA101937)

Appeal from an order of the Superior Court of Los Angeles County, William C. Ryan, Judge. Affirmed.

Paul Kleven, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Noah Hill and Thomas C. Hsieh, Deputy Attorneys General, for Plaintiff and Respondent.

---

Booker Timothy Cole petitioned for recall of sentence under the Three Strikes Reform Act of 2012 (Pen. Code, § 1170.126)<sup>1</sup> (Proposition 36) and The Safe Neighborhoods and Schools Act (§ 1170.18) (Proposition 47). The superior court denied Cole's petitions, finding beyond a reasonable doubt that Cole had suffered a prior juvenile adjudication for murder in 1975 that made him ineligible for relief under both propositions. On appeal Cole contends the court erred in considering facts outside the limited record of his juvenile adjudication to determine his eligibility for relief under Proposition 36. Alternatively, he requests we remand the matter to allow him to present evidence of his eligibility at a new Proposition 47 hearing. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. Cole's Commitment Offense and Sentence*

In 2000 a jury convicted Cole of possession of cocaine, a controlled substance (Health & Saf. Code, § 11350, subd. (a)). In a bifurcated proceeding after Cole waived his right to a jury on specially alleged prior conviction enhancements, the trial court found true Cole had suffered nine prior serious or violent felony convictions within the meaning of the three strikes law (§§ 667, subds. (b)-(i), 1170.12), including a qualifying juvenile adjudication for murder in 1975, and had served a separate prior prison term for a felony within the meaning of section 667.5, subdivision (b). The court sentenced Cole as a third strike offender to an aggregate state prison term of 26 years to life.

---

<sup>1</sup> Statutory references are to this code unless otherwise stated.

This court affirmed the judgment. (*People v. Cole* (Jan. 7, 2002, B143923) [nonpub. opn.].)

## *2. Cole's Petitions To Recall His Sentence*

In 2013 Cole's counsel petitioned for recall of sentence and resentencing under Proposition 36 and in 2014 under Proposition 47. After the court issued orders to show cause, the People opposed Cole's petitions, arguing Cole had suffered a 1975 juvenile adjudication for murder that was disqualifying under both propositions. Following continuances, supplementary petitions and other matters that prolonged resolution of Cole's petitions,<sup>2</sup> the court held a hearing on January 14, 2016 to determine Cole's eligibility for relief under Propositions 36 and 47.

At the eligibility hearing the People informed the court Cole's juvenile record from his 1975 adjudication could not be located despite a diligent search. Instead, the People introduced into evidence, without objection, the record of conviction in Cole's 2000 commitment offense. That record included (1) the amended information filed in December 1999 specially alleging Cole had suffered nine separate prior qualifying convictions under the three strikes law, including a 1975 juvenile adjudication for

---

<sup>2</sup> Among the reasons for the delay, on March 3, 2015 Cole, representing himself, filed an additional Proposition 47 petition in a different court asserting he had no disqualifying prior convictions. On June 12, 2015 that court granted Cole's unopposed petition, reclassified his offense as a misdemeanor and ordered his release. In September 2015 the People moved to set aside the order based on fraud. A bench warrant issued, and Cole was returned to custody pending a hearing to consider his eligibility for resentencing under Propositions 36 and 47.

murder; (2) a reporter's transcript reflecting the trial court expressly found true the special allegation Cole had suffered a 1975 juvenile adjudication for murder and that the offense qualified as a strike under the three strikes law; (3) a minute order stating the court found each one of the specially alleged three strikes allegations in the information true; and (4) our opinion in *People v. Cole, supra*, B143923, affirming the judgment of conviction.<sup>3</sup>

The People advised the court they had been informed the exhibits from the trial on the commitment offense, including those presented at the bifurcated proceeding regarding Cole's prior convictions, had been destroyed on December 31, 2003. Cole's counsel, who had represented Cole during his trial on the commitment offense and had retained those exhibits in his files, introduced them into evidence. Among them was exhibit 8, a letter written by the master files supervisor at the California Youth Authority in 1997, which stated, "Our records indicate that [Cole] was committed to the Youth Authority by the Juvenile Court of Los Angeles County on December 3, 1975 for 602 W&I Murder and Attempted Robbery," and "we are unable to supply

---

<sup>3</sup> Cole did not challenge on appeal the court's true finding that he had suffered a juvenile adjudication for murder that qualified as a strike conviction under the three strikes law. In rejecting Cole's argument that his indeterminate sentence constituted cruel and/or unusual punishment, this court identified the murder adjudication in 1975 as one of the reasons his sentence as a recidivist was not unconstitutional. (*People v. Cole, supra*, B143923, at p. 14.) Cole did not challenge the accuracy of that statement in a petition for rehearing or by other means before the judgment became final.

you with the regular material [for proving a prior conviction], as under the present policy, we do not retain case files on discharged wards beyond the period of seven years.” The court that had tried Cole’s commitment offense cited this exhibit when it found true the special allegation that Cole had suffered a prior juvenile adjudication for murder that qualified as a strike under the three strikes law.

In addition to the record of conviction on Cole’s commitment offense, the People introduced, again without objection, other evidence, including (1) a form from the Department of Justice, Division of Criminal Investigation and Information, Bureau of Identification, entitled “Current Arrest or Receipt,” identifying Cole’s birthdate (September 1959) and reflecting he was received into custody from the juvenile court on December 29, 1975 for the offenses of murder and attempted robbery; (2) a California Law Enforcement Telecommunication System (CLETS) printout stating a juvenile petition for murder was requested on October 10, 1975 and Cole was placed in custody at the California Youth Authority on December 29, 1975 for murder and attempted robbery; and a probation report dated May 1986 stating the date he was received into custody “on charge[s] of murder and attempted robbery.”

During the eligibility hearing Cole’s counsel asserted, based on Cole’s assurances, the parole board had “finally adjudicated” Cole’s 1975 homicide offense an involuntary manslaughter, not a murder, after he was placed in the custody of the Youth Authority. Counsel presented no evidence to support that claim, but argued that Cole’s 30 months in custody for the offense, a comparatively limited period, suggested the offense was something less egregious than a murder. Without the actual

record of the 1975 juvenile adjudication, Cole argued, the People could not carry their burden to prove beyond a reasonable doubt that the 1975 adjudication had been for murder, not manslaughter.

The superior court disagreed. Relying largely on the record of conviction in Cole's commitment offense, which was corroborated by dates in the CLETS report, and noting the absence of any contrary evidence presented by Cole to overcome the People's "substantial showing," the court found, beyond a reasonable doubt, that Cole had suffered a juvenile adjudication for murder in 1975.<sup>4</sup> The court discharged its prior orders to show cause and denied his petitions on the ground Cole was ineligible for relief under both Propositions 36 and 47.

## DISCUSSION

### 1. *The Court Did Not Err in Denying Cole's Petition for Recall of Sentence Pursuant to Proposition 36*

#### a. *Governing law and standard of review*

Proposition 36 amended the three strikes sentencing scheme by providing, in general, a recidivist is not subject to an indeterminate life term for a third strike felony that is neither serious nor violent unless the felony offense satisfies other

---

<sup>4</sup> At the time of Cole's eligibility hearing, the appellate courts were split as to whether the People's burden to prove an inmate ineligible for relief was by a preponderance of the evidence or beyond a reasonable doubt. After obtaining briefing on the question, the superior court ruled the People had carried their burden even under the more rigorous beyond-a-reasonable-doubt standard. While this appeal was pending, the Supreme Court held the appropriate standard was beyond a reasonable doubt. (See *People v. Frierson* (2017) 4 Cal.5th 225, 239-240.)

criteria identified in the statutes. (§§ 667, subd. (3)(2)(C), 1170.12, subd. (c)(2)(C).) In addition, Proposition 36 allows inmates already serving a three strikes sentence to petition for recall of sentence and, if eligible, obtain resentencing under the amended three strikes law (§ 1170.126, subds. (a), (b)), unless the court determines in its discretion that resentencing the petitioner would pose an unreasonable risk of danger to public safety (§ 1170.126, subd. (f)). (See *People v. Frierson* (2017) 4 Cal.5th 225, 230-231 (*Frierson*); *People v. Estrada* (2017) 3 Cal.5th 661, 666 (*Estrada*).)

Proposition 36 contains certain threshold eligibility requirements. (*Estrada, supra*, 3 Cal.5th at p. 667.) Among them, an inmate previously convicted of certain enumerated offenses, including murder, is not eligible for relief. (§§ 1170.126, subd. (e)(3), 667, subd. (e)(2)(C)(iv)(IV), 1170.12, subd. (c)(2)(iv)(IV); see *Frierson, supra*, 4 Cal.5th at p. 231.) Although a juvenile adjudication is not a conviction (Welf. & Inst. Code, § 203; *People v. Robinson* (2010) 47 Cal.4th 1104, 1117, fn. 14), the three strikes law specifically treats certain juvenile adjudications for specified serious or violent felonies, including murder, as qualifying strike convictions if the juvenile was 16 years of age or older at the time he or she committed the offense. (§§ 667, subd. (d)(3), 1170.12, subd. (b)(1)(D)(3); see *People v. Thurston* (2016) 244 Cal.App.4th 644, 667-668 [juvenile adjudications that constitute qualifying strikes under three strikes law are treated the same as convictions for purposes of determining eligibility under Proposition 36]; *People v. Arias* (2015) 240 Cal.App.4th 161, 167 [same].)

Once an inmate petitions the court for recall of sentence pursuant to Proposition 36 and has made an initial showing of

eligibility, the burden is on the People to prove beyond a reasonable doubt the petitioner is ineligible for relief. (*People v. Perez* (2018) 4 Cal.5th 1055, 1062; *Frierson, supra*, 4 Cal.5th at pp. 239-240.) If the court finds petitioner ineligible for relief, that is the end of the inquiry. The petitioner’s suitability for resentencing—that is, whether the petitioner poses an unreasonable risk of danger to public safety—is not considered. (*Perez*, at p. 1062.)

A trial court’s eligibility determination based on factual findings is reviewed for substantial evidence. (*People v. Perez, supra*, 4 Cal.5th at p. 1066.) The reviewing court does not reweigh the evidence. Appellate review is limited to considering whether the trial court’s finding is supported by the evidence presented at the eligibility hearing. (*Ibid.*)

b. *The court did not err in considering the record of Cole’s commitment offense in determining his eligibility*

Cole contends the court erred in considering the record of his commitment offense and other evidence to support its finding that Cole had suffered a juvenile adjudication in 1975 for murder. Citing *People v. Guerrero* (1988) 44 Cal.3d 343 (*Guerrero*), he insists the juvenile court was limited to considering the record of the conviction to be proved—Cole’s 1975 juvenile adjudication—to determine his eligibility. Because that record was unavailable, he argues, the People could not carry their burden as a matter of law.

At the threshold, Cole failed to object to any of the evidence he now challenges. Accordingly, he has forfeited the contention that the court considered inadmissible evidence. (Evid. Code, § 353; see *People v. Abel* (2012) 53 Cal.4th 891, 924 [“[a] defendant who fails to make a timely objection or motion to strike



evidence may not later claim that the admission of the evidence was error”]; *People v. Brimmer* (2014) 230 Cal.App.4th 782, 799-800 [defendant forfeited any challenge to court’s consideration of evidence outside record of conviction in Proposition 36 hearing by failing to object].) His argument is also without merit.

In *Guerrero* the Supreme Court addressed the scope of evidence a trier of fact may consider when determining the truth of a prior serious felony conviction allegation for purposes of a section 667, subdivision (a), sentence enhancement. The *Guerrero* Court held, in determining the *substance* of a prior conviction allegation—that is, the nature and circumstances of the conduct underlying the conviction that are not necessarily inherent in the judgment—the trier of fact may look “beyond the judgment to the entire record of conviction” but “no further.” (*Guerrero, supra*, 44 Cal.3d at pp. 355-356 [where the serious nature of defendant’s burglary conviction depended on facts not identified in the judgment of conviction, the trier of fact, in determining whether the burglary involved a residence, and thus qualified as a serious felony, could look beyond the judgment to the entire record of conviction, but no further].) The Court explained this rule “effectively bars the prosecution from relitigating the circumstances of a crime committed years ago and thereby threatening the defendant with harm akin to double jeopardy and denial of a speedy trial.” (*Id.* at p. 355.)

When, as here, the issue is not the nature and circumstances of the defendant’s conduct but simply the fact of a prior conviction or prison term, the record-of-conviction limitation announced in *Guerrero* does not apply. (*People v. Martinez* (2000) 22 Cal.4th 106, 117-118 [“*Guerrero* establishes that the trier of fact may look to the entire record of conviction to determine ‘the

substance of the prior conviction. [Citation.]’ [Citation.] Its limitations apply only to proof of ‘the circumstances of the prior crime,’ not to the fact of the conviction or prior prison term].) If evidence is admissible and otherwise reliable, it may be considered to establish the fact of a prior conviction or prior prison term even if not part of the record of conviction. (*Martinez*, at pp. 117-118 [CLETS reports that were not part of record of conviction admissible to prove prior prison term enhancement]; cf. *People v. Miles* (2008) 43 Cal.4th 1074, 1082 [“[w]here, as here, the mere fact of conviction under a particular statute does not prove the offense was a serious felony, otherwise admissible evidence from the entire record of conviction may be examined to resolve the issue”].)

In *Estrada* the Court addressed the record-of-conviction limitation in the context of a Proposition 36 eligibility hearing. Petitioner Mario Estrada had pleaded guilty in 1996 to grand theft in return for the dismissal of other felony charges and a special allegation relating to firearm use and was sentenced as a third strike offender to an indeterminate term of 25 years to life. After Estrada petitioned for recall of his sentence under Proposition 36, the People argued Estrada was ineligible for relief because he had been armed with a firearm or deadly weapon during the commission of his third strike offense, disqualifying conduct under the statute. Based on evidence contained in the preliminary hearing transcript of Estrada’s commitment offense, the court found the disqualifying conduct—firearm use—true. On appeal Estrada acknowledged the court reviewing a Proposition 36 petition may look beyond the judgment of conviction. However, offering a narrow interpretation of *Guerrero*, he argued the court could not consider facts beyond

those inherent in his guilty plea to grand theft. The *Estrada* Court rejected this argument, concluding, at the very least, a court may look beyond the plea to the entire record of conviction in considering whether the substance of the conviction disqualified petitioner from Proposition 36 relief. (*Estrada, supra*, 3 Cal.5th at pp. 668-672; accord, *People v. Cruz* (2017) 15 Cal.App.5th at p. 1110.)

Like the *Estrada* Court, we need not decide generally whether the limitation articulated in *Guerrero* applies to an eligibility hearing under Proposition 36, which involves a potential amelioration of a lawfully imposed sentence rather than a sentence enhancement. Even if it does, it has no application in these circumstances when the fact at issue is not the circumstances of the prior offense but simply the fact of the murder conviction itself. (See *Martinez, supra*, 22 Cal.4th 117-118.) Accordingly, the superior court did not err in considering the record from Cole's commitment offense. (See Evid. Code, § 1280 [court records admissible to prove prior conviction under public record exception to hearsay rule]; *People v. Woodell* (1998) 17 Cal.4th at pp. 458-459 [trial record and appellate opinion admissible for nonhearsay purpose of showing fact of conviction; those records also satisfied hearsay exception as official records]; accord, *People v. Guilford* (2014) 228 Cal.App.4th 651, 660 [applying *Woodell* in context of Proposition 36 proceeding].)<sup>5</sup>

---

<sup>5</sup> Because we reject Cole's contention that the court's consideration of the record of conviction of his commitment offense was improper, we do not address his alternative argument that his counsel's failure to object to that evidence at his eligibility hearing constituted ineffective assistance of counsel.

*c. The court's ineligibility finding is supported by substantial evidence*

Cole also contends the court's disqualification finding is not supported by substantial evidence. Although the record establishes Cole was 16 years old at the time a juvenile petition for murder was requested on October 10, 1975, Cole observes nothing in the record indicates when the homicide occurred.<sup>6</sup> If it took place before Cole's 16th birthday, that is, before September 25, 1975, it would not be a disqualifying offense under Proposition 36. (See §§ 667, subd. (d)(3), 1170.12, subd. (b)(1)(D)(3).) However, in finding the offense qualified as a strike under the three strikes law, the court trying the commitment offense necessarily found Cole was at least 16 years old at the time he had committed murder. Cole did not appeal that finding or challenge our reliance on it on direct appeal when we rejected his constitutional challenge to his sentence. Accordingly, the superior court did not err in relying on that necessarily implied finding in making factual determinations. (*People v. Woodell*, *supra*, 17 Cal.4th at p. 660; see *People v. Guilford*, *supra*, 228 Cal.App.4th at pp. 660-661 [“[i]f a party disagrees with the Court of Appeal's selection of the material facts or identification of the applicable law, the party can petition

---

<sup>6</sup> Although Cole did not make this argument in the superior court, principles of forfeiture do not apply to sufficiency-of-the-evidence challenges. (*Tahoe National Bank v. Phillips* (1971) 4 Cal.3d 11, 23, fn. 17 [“Generally, points not urged in the trial court cannot be raised on appeal. [Citation.] The contention that a judgment is not supported by substantial evidence, however, is an obvious exception to the rule.”]; *In re P.C.* (2006) 137 Cal.App.4th 279, 288 [same].)

for a rehearing and point out the deficiencies in the court's opinion"; because defendant did not file a petition for rehearing, "we presume the facts previously stated by this court were faithful to the appellate record before us and reliably summarized the evidence"].)

To be sure, the finding by the court at Cole's 2000 trial that his 1975 juvenile adjudication constituted a prior strike conviction was not conclusive. A prior strike conviction allegation must be proved each time it is specially alleged, whether as a sentencing enhancement or as a disqualifying offense. (See generally *People v. Miles, supra*, 43 Cal.4th at p. 1082 [People must prove all elements of alleged sentence enhancement beyond a reasonable doubt]; *Frierson, supra*, 4 Cal.5th at p. 239 [People must prove disqualifying facts at Proposition 36 eligibility hearing beyond a reasonable doubt].) We simply hold the People carried their burden of proof by providing evidence from the record of conviction of Cole's commitment offense, a final judgment that established Cole had suffered a prior disqualifying conviction under the three strikes law for murder in 1975. (See Evid. Code, § 452.5, subd. (b) [certified official record of conviction is admissible under Evidence Code section 1280 to prove prior conviction].) As the superior court observed, nothing prevented Cole from rebutting the People's prima facie showing by presenting evidence at his Proposition 36 hearing that he was not yet 16 years old at the time he committed the murder. He presented no such evidence. On this record, substantial evidence supports the court's finding Cole was ineligible for relief under Proposition 36.

## 2. *The Superior Court Did Not Err in Denying Cole's Proposition 47 Petition*

### a. *Governing law*

Proposition 47 reclassified as misdemeanors certain drug and theft-related offenses previously classified as felonies or wobblers (crimes that can be punished as either felonies or misdemeanors). (See *People v. Valencia* (2017) 3 Cal.5th 347, 356.) Proposition 47 also added section 1170.18 to the Penal Code, creating procedures by which eligible offenders who had completed their sentences could obtain a redesignation of their felony offense to a misdemeanor (§ 1170.18, subds. (f), (g)) and eligible offenders currently serving a sentence for a since-reclassified felony could obtain a recall of sentence and resentencing (§ 1170.18, subds. (a), (b)). (*People v. DeHoyos* (2018) 4 Cal.5th 594, 597; *Valencia*, at p. 355.)

Similar to Proposition 36, a defendant who has been previously convicted of specified serious or violent crimes, colloquially known as “super strikes” (*People v. Dehoyos, supra*, 4 Cal.5th at p. 598; *People v. Hoffman* (2015) 241 Cal.App.4th 1304, 1310), is not eligible for Proposition 47 relief. (§§ 667, subd. (e)(2)(C)(iv)(I)-(VIII), 1170.18, subd. (i).) Murder is a disqualifying super strike. (§ 667, subd. (e)(2)(C)(iv)(IV).)<sup>7</sup> The

---

<sup>7</sup> Although the specific text of Proposition 47 refers to convictions, not juvenile adjudications (see *In re C.B.* (2018) 6 Cal.5th 118, 125), Proposition 47's disqualifying provisions, like Proposition 36's, encompass juvenile adjudications for serious or violent felonies committed when the juvenile was 16 years old or older. (See §§ 1170.18, subd. (i), 667, subd. (e)(2)(C); *People v. Sledge* (2017) 7 Cal.App.5th 1089, 1099; cf. *People v. Zamora* (2017) 11 Cal.App.5th 728, 740 [Proposition 47's disqualification

petitioner seeking resentencing under Proposition 47 bears the burden of proving eligibility for relief. (*People v. Romanowski* (2017) 2 Cal.5th 903, 916; *People v. Bear* (2018) 25 Cal.App.5th 490, 495.)

b. *Cole's juvenile adjudication for murder made him ineligible for relief*

Recognizing the court's finding in his Proposition 36 hearing that he had suffered a disqualifying super strike also made him ineligible for resentencing under Proposition 47, Cole requests we affirm the denial of his Proposition 47 petition without prejudice to allow him the opportunity to present affirmative evidence that his juvenile adjudication in 1975 was for manslaughter, not murder, and/or that he was not yet 16 years old when he committed that offense.

Cole does not specify the evidence he intends to present at a new hearing. Rather, he emphasizes discrepancies in the evidence before the superior court at his eligibility hearing: The two custodial affidavits from the Los Angeles Superior Court attesting to diligent searches for Cole's juvenile records in January and March 2016 identified the wrong case number while an unexplained handwritten notation on a letter from the District Attorney to the court requesting the case file contains a handwritten notation with the correct case number. Although Cole's counsel did not identify these discrepancies at the hearing, Cole asserts Proposition 47's purpose of reducing indeterminate life sentences for low-level drug offenders supports granting him the opportunity to present affirmative evidence to support his claim. Cole's appellate counsel also states he has submitted his

---

for super strikes does not apply to juvenile adjudications for offenses not specified in section 667, subdivision (e)(2)(C)(iv)].)

own request for the juvenile case file with the proper case number and has not received any response.

Although not framed in this way, Cole's argument for a remand is basically premised on a claim of ineffective assistance of counsel in failing to identify at the hearing mistakes in the custodial affidavits. However, the record on appeal is silent as to the impact, if any, of that discrepancy; and Cole has not demonstrated his counsel's failure to object, even if deficient, was prejudicial. (See *People v. Rices* (2017) 4 Cal.5th 49, 80 [ineffective assistance of counsel requires showing of both counsel's deficiency and resulting prejudice]; *People v. Johnson* (2015) 60 Cal.4th 966, 979-980; see also *Strickland v. Washington* (1984) 466 U.S. 668, 696 [104 S.Ct. 2052, 80 L.Ed.2d 674].)

*People v. Page* (2017) 3 Cal.5th 1175, on which Cole relies to support his remand request, is inapposite. In *Page* an inmate serving a felony sentence for the theft form of the Vehicle Code section 10851 offense<sup>8</sup> petitioned for resentencing under Proposition 47. At the time of the inmate's eligibility hearing, the law was unsettled as to whether Proposition 47's reclassification provisions applied to a conviction for violating Vehicle Code section 10851. The superior court denied the petition, agreeing with the People that Proposition 47 did not apply to the inmate's commitment offense. The Supreme Court disagreed, concluding

---

<sup>8</sup> Vehicle Code section 10851, subdivision (a), provides in part, "Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with the intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle . . . is guilty of a public offense," which may be punished as a felony or a misdemeanor.



theft of an automobile under Vehicle Code section 10851 was included among the reclassified felonies in Proposition 47 when the value of the automobile was \$950 or less. Due to the nature of the parties' arguments, however, no evidence had been presented in the superior court as to the value of the car. Accordingly, the Court concluded the appropriate disposition was to affirm the trial court's denial of the inmate's Proposition 47 petition without prejudice to consideration of a new petition providing affirmative evidence of the car's value for purposes of establishing the inmate's eligibility. (*Page*, at pp. 1189-1190.) No similar justification for such a disposition exists in this case.

#### **DISPOSITION**

The court's order denying Cole's petitions for resentencing under Propositions 36 and 47 is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.